

DOCUMENT RESUME

02884 - [A1932982]

[Waiver of Erroneous Overpayment of Pay]. B-108247. July 6, 1977. 3 pp.

Decision re: Vernon E. Dorsey; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Navy.

Authority: 5 U.S.C. 5584. B-187891 (1977). B-187636 (1977). B-184480 (1976).

Through administrative error, Naval employee prematurely received in-grade increase over 1 year before entitlement. Employee should have known that increase was erroneous, and request for waiver was denied. Upon reconsideration, allegation that he questioned propriety of increase with personnel office was not supported by agency, and denial of waiver was sustained. (DJH)

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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

*CAPLAN
Civ. Rec.*

FILE: B-188247

DATE: July 6, 1977

**MATTER OF: Vernon E. Dorsey - Waiver of erroneous
overpayment of pay**

DIGEST: Employee stated on request for waiver that he did not question the propriety of his within-grade increase to step 4, effective February 18, 1973. Claims Division denied request for waiver since a reasonable and prudent employee should have known that he was not entitled to a within-grade increase until August 1974, since the fact was clearly shown on the SF-50 dated October 10, 1972. Employee now states that he questioned propriety of increase and was reassured it was accurate. Agency disputes this contention and we accept agency report as accurate since no sufficiently convincing contrary evidence has been presented.

This action is in response to a letter dated May 10, 1976, from Mr. Vernon E. Dorsey requesting reconsideration of the action DW-2-2580017-MB-3 dated December 8, 1975, of our Claims Division, which denied Mr. Dorsey's request for waiver of the claim against him by the United States for \$938.40 in erroneous overpayments of pay.

Mr. Dorsey, an employee of the Naval Air Test Center, Patuxent River, Maryland, received a promotion from Machinist (Maintenance), WG-10, step 3, to Shop Planner (Metalworking Shops) WD-35, step 1, effective August 20, 1972. Mr. Dorsey was earning an hourly rate of \$5.22 after the promotion. Due to a pay system change, Mr. Dorsey's position was changed to WD-5, step 3, at \$5.44 per hour, effective September 3, 1972. His Standard Form (SF) 50, Notification of Personnel Action, dated October 10, 1972, explained the change in the classification of his position and noted under "Remarks" as follows:

"In accordance with OCM 1tr 0332.5/061.4:mls of 7 July 1972. WGI to 4th Step 8/74"

Although his increase to step 4 was not due until August 18, 1974, as indicated on his SF-50 quoted above, Mr. Dorsey received a within-grade increase to step 4 at \$6.03 per hour effective

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February 18, 1973, as a result of an administrative error. Therefore, Mr. Dorsey erroneously received overpayments of pay from February 18, 1973, to August 17, 1974 (when his step increase was properly due), in the amount of \$938.40.

Mr. Dorsey requested waiver of this indebtedness on the grounds that the overpayment was due to an administrative error and that he "believed the step increase received on 02-18-73 was due and did not question it." However, the Navy Accounting and Finance Center recommended denial of Mr. Dorsey's request for waiver on the grounds that he should have been aware that he was not due the within-grade increase effective February 18, 1973, because of the notation on his SF-50 dated October 10, 1972, noted "WGI to 4th Step 8/74." Our Claims Division concurred in the recommendation of the Department of the Navy and denied Mr. Dorsey's request for waiver since "he should have questioned the increase he received February 18, 1973, and his failure to do so places upon him the onus of at least partial fault."

Mr. Dorsey now requests reconsideration of the denial by our Claims Division and wishes to correct his original statement that he believed the step increase was proper and therefore did not question it. He now states that in August of 1974, while at the Civilian Personnel Office on another matter, he asked Mrs. Mary L. Jennifer about the propriety of his step increase and was assured by her that it was correct. However, the Navy Supervisory Personnel Staffing Assistant, Civilian Personnel Department, stated in a memorandum dated May 18, 1976, as follows:

"Mrs. Jennifer has no recollection of Mr. Dorsey questioning the correctness of the within grade increase effective 18 February 1973 as mentioned in reference (a). She further states that if he had questioned it, she would have reviewed the personnel action and taken whatever action was deemed necessary."

This Office does not conduct adversary hearings in adjudicating claims but decides them on the basis of the written record presented by the parties. When the record reflects a dispute between the parties as to material facts which cannot be resolved without adversary proceedings, it is the long-standing practice of this Office to resolve the matter in favor of the Government. B-187891, June 3, 1977.

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The statutory authority for our consideration of this request for waiver is found at 5 U.S.C. § 5584, which permits the waiver of a claim of the United States arising out of an erroneous payment of pay and allowances. Under the express terms of the statute, waiver may not be made if there exists, in connection with the claim, an indication of fault or lack of good faith on the part of the employee or any other person having an interest in obtaining the waiver. Therefore, if it is determined that, under the circumstances, a reasonable man would have made inquiry as to the correctness of payment, but the employee did not, then the employee is not free from fault, and the claim against him may not be waived. Matter of Jack M. Bernstein, B-187636, March 2, 1977.

Generally, where an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action, he is not without fault and waiver will be denied. Matter of Arthur Weiner, B-184480, May 20, 1976.

Since Mr. Dorsey's original statement that he did not question the receipt of his step increase is consistent with the facts as presented by his agency, we do not accept Mr. Dorsey's statement of May 10, 1976, as sufficiently convincing contrary evidence.

Accordingly, we find no basis for reversing the action of our Claims Division and it is sustained.


Deputy Comptroller General
of the United States